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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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In the Matter of ADVANCE NOTICE OF PROPOSED RULEMAKING CONCERNING PASSENGER MANIFEST INFORMATION (NOTICE 91-2)	Docket 47383

COMMENTS OF THE
AIR TRANSPORT ASSOCIATION OF AMERICA

The Air Transport Association of America submits these comments in response to the advance notice of proposed rulemaking concerning passenger manifest information that the Department of Transportation has issued. 56 Fed. Reg. 3810 (Jan. 31, 1991).

The ANPRM asks for comments about the air carrier passenger manifest information requirement set forth in section 203 of the Aviation Security Improvement Act of 1990, Pub. L. No. 101-604, §203, 104 Stat. 3066, 3082-83 (1990). There are three central considerations for this rulemaking. First, we strongly believe that passenger manifest information requirements should be imposed equally upon U.S. and foreign airlines. Any disparity in the treatment of U.S. and foreign airlines in the rule that emerges from this proceeding will cause serious diversion of traffic from U.S. airlines, at a time when they have been financially devastated. Second, information collection requirements must be designed to minimize passenger processing

burdens and delays. Finally, we remain very concerned that the short period of time after an aviation disaster that the law allows an airline to provide a passenger manifest to the Department of State will jeopardize the accuracy of the manifest. Our experience with aviation accidents is that accurate manifests can take significant periods of time to produce. The reconciliation process that is needed to generate a complete manifest can be laborious. To expect the production of a complete manifest within one or three hours, as the law requires, is therefore unrealistic.

I

Passenger manifest information collection will be a complicated and expensive undertaking for airlines. However valuable that information is regarded, meeting the collection requirement will place great demands on airline resources.

These demands will occur in a variety of ways. Both in-house and computer reservation systems must be reprogrammed. Intercarrier information exchange procedures must be developed. Further, CRS, carrier reservation and customer service, and travel agency personnel must be trained in new procedures.

As discussed more fully below, airlines cannot be expected to rely upon airport check-in as the point at which manifest information is obtained from passengers. Our facilities cannot

accommodate such a concentrated demand on airline resources. To the extent possible, manifest information must be collected before the passenger's arrival at the airport.

The actual collection of information from passengers will add very significant delays in the processing of our passengers. Our current estimate is that obtaining the information at airport check-in will take on average at least 60 seconds per passenger. To illustrate the impact of this added passenger processing time, if 200 passengers on a flight had to provide the manifest information at check-in, that could prolong their processing by a total of 3 hours and 20 minutes. Additional processing time of this magnitude would appreciably degrade airline service. Such degradation would have both operational and competitive implications.

The operational implications would be significant and, at some airports, difficult or impossible to overcome. If confronted with processing delays of the magnitude described above, airlines would seek to augment personnel, equipment and counter space at the airport to ameliorate the delays. Unfortunately, at some airports, especially foreign airports, counter space is at a premium. Therefore, expansion of the check-in areas may not always be accomplishable. If a carrier cannot expand its check-in area, passenger processing delays will not be alleviated. Passenger inconvenience therefore would be

quickly translated into competitive disadvantage.

A U.S. airline is likely to experience competitive disadvantage in two ways. First, if foreign airlines are not subject to the passenger manifest requirement and its inherent delays, the travelling public will regard them as providing a superior service. No one enjoys waiting in line; this is particularly so when the most memorable part of the wait is being asked questions that obviously relate to the possibility of an accident involving the flight on which the passenger is booked. Second, U.S. airlines will suffer competitively if foreign airlines and foreign travel agents do not transmit to them manifest information about passengers with whom they have had a transaction and whom U.S. airlines will transport. Absent such advance information, a U.S. airline will have to obtain the information at airport check-in. This will exacerbate its delays and make its foreign competitor appear more attractive. A "level playing field" for U.S. and foreign airlines is consequently indispensable for the continuation of a competitive U.S. airline industry.

Our concern about competitiveness is heightened by the lacerating financial results that we have been experiencing. The U.S. airline industry suffered a $2 billion loss in 1990, which was the greatest financial loss in its history. Thus far in 1991 our international traffic has fallen precipitously. U.S.

airlines simply cannot afford to be at a disadvantage competitively with foreign airlines in an area as significant as passenger manifest requirements.

We believe that the contact name and telephone number will prove to be troublesome items of information to obtain from passengers. We expect that some passengers will resist providing such information, for a variety of reasons. The rule issued in this proceeding therefore should only require that contact information be sought, not that it be provided. Moreover, it should not specify what is an appropriate category of contact.

Since airlines will be required to obtain manifest information from their customers, we feel strongly that the Department of State should treat confidentially the information in a manifest that it receives from an airline. The information in it should only be provided to family members of a passenger. Furthermore, nothing in the regulations that DOT issues in this rulemaking should interfere with the historic role that airlines have played of being primarily responsible for informing next of kin of an accident involving a family member. Airlines have a very keen sense of responsibility of being the principal contact in the event of an accident. They have incomparable experience in such matters and accordingly have trained their personnel to perform that sensitive task. Nothing should be done to usurp their deeply rooted role.

Finally, the success of the passenger manifest requirement will be dependent upon the active participation of the travel agency community. At least three-quarters of international journeys are booked through travel agents. Airlines cannot effectively process at airport check-in great numbers of passengers that theretofore have not provided manifest information. Since many passengers will have used a travel agent to obtain their transportation, assuring that travel agents collect manifest information is essential in order to avoid overwhelming airport facilities. Any rule that is issued in this proceeding therefore should assign travel agents responsibility in collecting manifest information from passengers who book through them.

II

Our responses to the questions raised in the ANPRM follow. They are arranged according to the order in which DOT asked them.

Definition of aviation disaster. The ANPRM proposes to define aviation disaster as

> an occurrence associated with a U.S. air carrier's international operations that takes place between the time any person has checked in for boarding of a flight and the time all such persons have disembarked, and during the time which any person suffers death or serious injury, is taken hostage, or the aircraft

> receives substantial damage either as the result of accident or of an unlawful act directed at the aircraft or its passengers.

56 Fed. Reg. at 3811.

This proposed definition is both too narrow and too broad. It is too narrow because its applicability is limited to U.S. air carriers. As we stated above, foreign air carriers must be required to collect manifest information. Nearly one-half of the passengers who fly to and from the United States do so on foreign air carriers. U.S. citizens should enjoy whatever benefits the passenger manifest requirement provides irrespective of the nationality of the airline they patronize.

The proposed definition is too broad in several important respects. It would require that an air carrier be prepared to provide a manifest once "any person has checked in for the boarding of a flight . . . ." (Emphasis added.) That is a premature and misfocused onset of the requirement. An air carrier has no control over a passenger before a flight is boarded. Passengers are free to do what they will until that time. Furthermore, the law was clearly intended to respond to aviation disasters that occurred overseas. With these considerations in mind, the requirement should be restricted to international flights when they are outside of the United States.

Some of the triggering events in the proposed definition are insufficiently related to an aviation disaster. Events that activate the requirement to provide a passenger manifest should be restricted to an aircraft accident that results in death or serious injury to a passenger, or an act of aircraft piracy directed at the aircraft.' These criteria more closely relate to the term "aviation disaster" than those in the definition proposed in the ANPRM.

Data collection and protection. (1) Air carriers and foreign air carriers should be responsible for obtaining manifest information. However, they should not be responsible for verifying the accuracy of the responses that the passenger provides. That would be a difficult and very costly undertaking. Such an undertaking would be particularly inappropriate because the passenger should be regarded as responsible for his or her answers. For that reason, if a passenger declines to provide the name and telephone number of a contact, he or she should not be refused transportation.

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[1] The term "aircraft piracy" is defined in section 902(i)(2) of the Federal Aviation Act as

> any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft within the special aircraft jurisdiction of the United States.

49 U.S.C. app. §1472(i)(2) (1982).

(2) Charter and tour operators, whether they are selling seats on scheduled or charter flights, should be required to collect passenger manifest information. Similarly, air taxi operators and commuter airlines should be required to collect the information. The category of the operator involved in the provision of foreign air transportation should not affect the obligation to collect information.

(3) Manifest information should only be required to be collected from passengers who are U.S. citizens. The impetus for the passenger manifest law was a desire to benefit the families of U.S. citizens. Report to the President by the President's Commission on Aviation Security and Terrorism 97-105 (1990) ("the Report"). In view of that, and the need to minimize the substantial burdens that information collection will impose upon air carriers, only U.S. citizens should be subject to the information collection requirement.

Restrictions in foreign laws upon the collection and dissemination of personal information could place carriers seeking to obtain manifest information overseas in a dilemma. Their adherence to U.S. law and regulations would mean violating the law of the nation in which they were collecting the information. Conversely, obeying the foreign nation's law would require them to disregard U.S. law.

Because of this potentially serious dilemma, and as long recognized in section 1102(a) of the Federal Aviation Act and its predecessor, the regulations that are promulgated in this rulemaking must allow carriers to obey any applicable foreign laws that affect the collection and dissemination of personal information overseas. 49 U.S.C. app. §1502(a) (1982). In addition, the Department of State or DOT on a country-by-country basis should advise carriers of their ability to collect and transmit passenger manifest information. DOT should not require that such information be collected at foreign locations until it, or the Department of State, has so advised carriers.

The information collection requirement should be applicable to all U.S. citizens who board the air carrier or foreign air carrier flight. The category of passenger -- e.g., standby, nonrevenue, rerouted -- should not affect that requirement.

(4) Except as noted below, the information collection requirement should be applicable to all international flight segments. Whether the segment involves transportation between the United States and a foreign point, or between two foreign points, the passenger manifest collection requirement should be applicable.

An exception to that requirement should be made for flights between the United States and Canada, the United States and

Mexico, and the United States and Caribbean points. Travel between the United States and Canada, Mexico or the Caribbean has historically been treated differently than travel involving other foreign nations. The proximity of those nations, the lack of a passport requirement for travel to and from them, the communities of interest between our countries, and the great volume of transborder and Caribbean traffic have justified that treatment. Similarly, transborder and Caribbean air travel should be exempt from the passenger manifest regulations.

Requiring the collection of manifest information from transborder and Caribbean passengers would significantly diminish the ease which passengers have come to expect of travelling between the United States and Canada, Mexico or the Caribbean. Moreover, requiring that such information be collected would be very burdensome and expensive for carriers because of the great number of passengers using those services. The character of transborder and Caribbean operations would be radically changed if the information collection requirement were applicable to them.

DOT therefore should exempt, under section 416(b)(l) of the Federal Aviation Act, transborder and Caribbean operations from any information collection requirement. Section 416(b)(l) authorizes DOT to exempt any person from the requirements of title IV of the Federal Aviation Act or any rule prescribed

pursuant to it, if such relief would be in the public interest. 49 U.S.C. app. §1386(b)(1) (1982). Since the authority for the passenger manifest requirement is contained in section 410 of the Act, which is part of title IV of the Act, DOT has the ability to grant such an exemption. Granting it would serve the public interest because the ease of transborder and Caribbean travel that passengers have enjoyed for decades would not be disrupted.

(5) As we have previously stated, collection of passenger manifest information will be time-consuming and labor intensive. Passengers will inevitably suffer delays and carriers will have to bear significant new expenses because of it.

These shortcomings would be eliminated if the Department of State purchased and distributed to carriers automated passport readers. Since 85 to 90 percent of U.S. passports are in machine readable format, use of these machines would enable the prompt collection from many passengers of their full names and passport numbers, as well as citizenship and date of birth. Any rule that is promulgated in this proceeding should be compatible with the advance passenger information program the U.S. Customs Service and the Immigration and Naturalization Service are conducting. That automated program, which uses machine readers, collects essential information about international travellers. A related measure that would prove very useful would be the creation and maintenance by the Department of State of a data base containing

the passenger information that the law requires. Were such a data base created and periodically updated, it, in conjunction with a passport reader program, could be called upon to provide the necessary manifest information almost instantaneously.

Automated passport readers are an available, reliable and efficient facilitator in the processing of international passengers. Both government and industry have recognized their value. Unfortunately, the U.S. Government has not purchased the necessary equipment. Passengers and airlines are about to be the victims of that indifference to facilitation needs.

We ask that the Department of Transportation spur the government's purchase and distribution of passport readers. Further delay in that undertaking is unacceptable, especially when it is juxtaposed against the requirements contemplated in this proceeding.

(6) The imposition of a manifest information collection requirement will require reprogramming of computer reservation systems. That effort will require time and absorb resources. The cost of the effort cannot be satisfactorily estimated until there is a more precise indication of the requirements that this rulemaking will impose on carriers.

The industry intends to develop procedures to accommodate

the intercarrier exchange of manifest information. We expect that that development will begin shortly. In view of this, the regulations that DOT promulgates in this rulemaking should not deal with this procedural issue.

(7) The airline industry realizes that the information collected from passengers should not be disseminated to unauthorized recipients. However, we do not believe that such information should be required to be stored in a segregated information system.

Airline personnel deal daily with passenger data that are more sensitive than manifest information described in the Act. In addition to passenger reservation information, they handle such sensitive information as the checking account and credit card numbers of passengers. Airline personnel are instructed to restrict their use and dissemination of such information. In view of this well-established industry practice of dealing properly with sensitive data, no additional information protection measures for airline personnel should be required in this rulemaking.

(8) Facilitation. For the reasons that we have previously described, we anticipate that the passenger manifest requirement will adversely affect passenger processing times. Although carriers will attempt to add resources in response to the

requirement, increasing resources at some airports will not be possible. Verification of information in these circumstances would create unacceptable delays in processing times.

(9) Domestic/foreign. (a) The provision of manifest information by foreign air carriers and foreign travel agents to U.S. air carriers could become a very serious issue for U.S. air carrier operations at foreign locations. Without the advance provision of such information, processing times at those locations may sharply degrade. Such a degradation would have serious competitive effects on U.S. air carriers.

In light of that potential, we believe that the U.S. Government should promptly negotiate assurances with foreign governments that foreign air carriers and travel agents will transmit to U.S. air carriers manifest information that they have collected about passengers who will be travelling on U.S. carriers. Without such intergovernmental arrangements, U.S. carriers may not receive the advance information that they need from foreign sources.

(10) There should be a "level playing field" for passenger manifest information. Both U.S. and foreign air carriers should be required to collect manifest information for U.S. citizens. The method of collecting the information, however, should be left up to the carrier.

Customs data, and their method of collection, are not comparable to the manifest information required under the Act.

(11) We have previously expressed in these comments our firm belief that U.S. air carriers will suffer serious competitive harm if foreign air carriers are not subject to the same manifest information collection requirement as U.S. carriers. Today, the loss by a U.S. air carrier of one passenger represents lost revenue that it simply cannot afford. Equity demands that the manifest collection requirements of U.S. air carriers and foreign air carriers be identical.

We believe that a passenger is likely to select an airline that does not require the contemplated manifest information. We have two reasons for our belief. First, providing such information, especially at an airport, will be time-consuming. Second, provision of such information will not be a pleasant experience for a passenger, because it will raise the possibility that the safety of travel on the carrier may not be entirely free from doubt. We cannot overcome the adverse competitive implications of these factors unless identical requirements are placed upon foreign air carriers.

(12) The passenger manifest requirement should not be expanded to include domestic flights. There is absolutely no legal authority for such an expansion.

A "bright line" must be drawn in the regulations between domestic operations and international operations. No flight that has as its point of origin an airport in the United States and its point of destination an airport in the United States should be subject to the passenger manifest requirement. Whether the domestic flight remains entirely in the United States, operates briefly outside of it, or overflies another country on its journey between two U.S. points should not affect this principle. Otherwise, domestic flights that operate to and from such airports as Kennedy International Airport in New York, Logan International Airport in Boston, and Los Angeles International Airport which for air traffic control or noise-abatement reasons are routed over the ocean would be encompassed in the passenger manifest regulation. Moreover, domestic flights between Upstate New York and such cities as Chicago and Detroit which fly through Canadian airspace would be included in the coverage of the regulation. No legal or policy justification exists to expand the regulation's scope to cover such flights.

The impetus for the inclusion of the passenger manifest requirement in the Act was a concern for operations involving foreign points, not domestic operations. The recommendations of the President's Commission on Aviation Security and Terrorism about passenger manifests were made in the context of the responsibilities of the Department of State, which relate to accidents that occur to U.S. citizens overseas. Report 97-103.

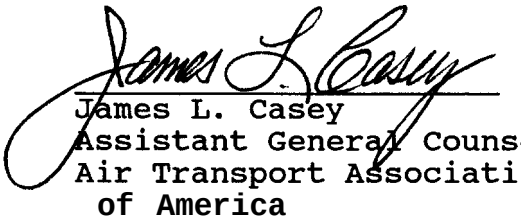
Thus, the stimulus for the law's requirement was entirely oriented to foreign disasters.

(13) As we have stated previously, transborder and Caribbean flights should not be included in this rulemaking.

III

We urge that the Department carefully consider the competitive and airline resource implications of any proposal that it issues in this proceeding.

Respectfully submitted,



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